IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.32 of 1998
Date of Decision:3.11.2006

The Commissioner of Income-tax, Amritsar

.....Petitioner

Vs.

Anju Ahuja Prop., M/s Chand Cottons, Bhatinda

.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Dr. N.L.Sharda, Advocate for the petitioner.

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ADARSH KUMAR GOEL, J.

The following question of law has been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in I.T.A. No.211(ASR)/1992 dated 22.9.1995 for the assessment year 1989-90:-

> "Whether on the facts and the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs.2,20,033/- by holding that there was no diversion of income in respect of constituents and transactions in respect of the constituents were genuine?"

The assessee is deriving income from the business of sale and purchase of cotton. From the commission received from 23 parties, the assessee also claimed having paid commission to certain parties which was

sought to be deducted. One of the parties, Smt. Pushpa Rani stated that she never conducted business with the assessee. The assessee did not produce some of the persons to whom commission was claimed to have been paid. After remand, the assessee produced some of the constituents. Taking into account the facts, assessment was made. On appeal, CIT(A) partly accepted the claim of the assessee in respect of parties which were produced.

The Tribunal upheld deletion of addition to the income of the assessee to the extent of Rs.2,20,033/-. The Tribunal also upheld the plea of the assessee to the extent that deduction was held to be not allowable by the CIT(A) following a judgment of Calcutta High Court in **CIT Vs. K.K.Birla, (1982) 137 ITR 126** wherein it was held that in absence of evidence of genuineness of a transaction, claim of an assessee for deduction towards commission could not be accepted. The judgment was distinguished on the ground that on facts the genuineness of the transactions was duly proved. Contention of the revenue that the genuineness of the transaction was not proved in absence of assessee maintaining sauda bahi(written contract), or payment of advance and taking of security deposit was rejected. It was held that these factors could not be conclusive as in a given case, there may be oral contract and on account of trust between the parties, no security or advance may be taken.

We have heard learned counsel for the Revenue and perused the finding given by the Tribunal.

Whether or not a particular transaction is genuine is primarily a question of fact and no rigid principles can be laid down for deciding when a particular expenditure can be allowed as genuine. The Tribunal having considered the pros and cons of the matter and having recorded a finding of

fact that the transactions in question were genuine, we are unable to hold the said finding to be perverse.

In view of the above, the question is answered against the Revenue and in favour of the assessee.

The reference is disposed of.

(ADARSH KUMAR GOEL)
JUDGE

November 3, 2006 **(RAJESH BINDAL)**
renu **JUDGE**